

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1035

In The
United States Court of Appeals
For The Second Circuit

B
PMS

UNITED STATES OF AMERICA,

Appellee,

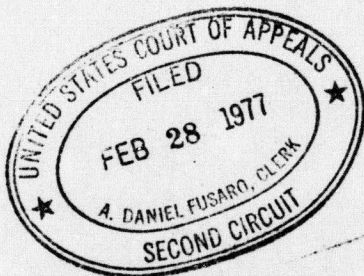
vs.

PASQUALE MADDALENA,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

APPELLANT'S APPENDIX



TO: UNITED STATES ATTORNEY
Eastern District of
New York
225 Cadman Plaza East
Brooklyn, New York 11201

JACK LEFKOWITZ, ESQUIRE
Attorney for the Defendant-
Appellant, PASQUALE MADDALENA
Office and P.O. Address
150 Broadway
New York, New York 10005

HAL MEYERSON, ESQUIRE
Of Counsel
Office and P.O. Address
80 Broad Street
New York, New York 10004

PAGINATION AS IN ORIGINAL COPY

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U.S. MAGISTRATE Assigned

0715

2071

FELONY F- X

D. District Office

MADDALENA, PASQUALE

JUVENILE

*1

U.S. MAG. CASE NO.

Docket No.

U.S. DISTRICT COURT
21:622

OFFENSES CHARGED

Violation of Meat Inspection Act and
did accept gratuities (Govt Employee)

ORIGINAL COUNTS

5

BEST COPY AVAILABLE

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT X	ARRAIGNMENT	TRIAL
11/9/76	11/9/76	11/16/76	12/22/76
Summons Served	Indictment	Arraignment	Trial Set for
First Appearance	12/2/76		12/27/76

SUPERSEDING COUNTS

BAIL - RELEASE	
<input type="checkbox"/> Denied	<input type="checkbox"/> AMF
<input type="checkbox"/> Set	<input type="checkbox"/> Fugitive
<input type="checkbox"/> \$ 000	<input type="checkbox"/> Pers. Recog.
<input type="checkbox"/> Date	<input type="checkbox"/> PSA
<input type="checkbox"/> Bail Not Made	<input type="checkbox"/> conditions
<input type="checkbox"/> Status Changed (See Docket)	<input type="checkbox"/> 10% Deposit
	<input type="checkbox"/> Surety Bond
	<input type="checkbox"/> Collateral
	<input type="checkbox"/> 3rd Party Cust.
	<input type="checkbox"/> Other

MAGISTRATE		OUTCOME:
Search Warrant Issued	DATE	<input type="checkbox"/> DISMISSED
Summons Issued	INITIAL NO.	<input type="checkbox"/> HELD FOR CJ OR OTHER PROCEEDING IN THIS DISTRICT
Arrest Warrant Issued	INITIAL APPEARANCE DATE	<input type="checkbox"/> HELD FOR CJ OR OTHER PROCEEDING IN DISTRICT BELOW
COMPLAINT	PRELIMINARY EXAMINATION	
OFFENSE in Complaint	IN MOVING INDICTMENT	

U.S. Attorney, or Asst

ATTORNEYS

Jaacob P. Lefkowitz

150 Broadway

New York NY 10038

96444845

DAWSON, AUSA

DATE	DOCKETS	PROCEEDINGS	EXCLUDABLE DELAY
11/9/76	Before CHREIN, J. - Indictment filed.		
11/16/76	Notice of Appearance filed.		
11/16/76	Before WEINSTEIN, J. - Case called. Deft and counsel present. Deft arraigned and enters a plea of not guilty. Pre-Trial conference held and concluded. Bail \$1,000.00 P.R.B. Trial set for 12/22/76 at 10:30 a.m.		
11-23-76	Notice of Readiness for Trial filed.		
12/2/76	SUPERSEDING INFORMATION FILED. (S).		
12-14-76	Before Weinstein, J. - Case Called. Deft. & Counsel not present. Case adjd. to 12-22-76 at 9:30 A.M. for Trial as to the underlying indictment.		
12/22/76	Before WEINSTEIN, J. - Case called. Deft & Counsel present. Trial ordered and begun. Jurors selected and sworn. Trial continued to 12/23/76 at 1:00 p.m.		
12-23-76	Before Weinstein, J. - Case Called. Trial continued to 12-27-76 at 9:30 A.M.		

IV. PROCEEDINGS (continued)

PAGE TWO

V. EXCLUDABLE DELAY

DATE	DOCUMENT NO.	EXCLUDABLE DELAY	REMARKS
12-28-76			Stenographer's Transcript dated December 22, 1976 and December 23, 1976 filed.
12-27-76			Before Weinstein, J. - Case Called. Deft. & Counsel present. Trial resumed. Govt. rests. Deft's. motion to dismiss the indictment is denied. Deft. rests. Deft's. motion for judgment of acquittal is denied. Govt. sums up. Deft. sums up. Mr. Dawson sums up in rebuttal. Court charges Jury. Alternates discharged. Marshals sworn. Jury retires for deliberation. Jury returns and renders a verdict of GUILTY as to counts 1, 2, 3, 4, and 5. Jury polled and discharged. Deft's. motion to set aside the verdict is denied. Trial concluded. Sentence set for 1-7-77 at 9:30 A.M.
1/7/77			Before WEINSTEIN, J. - Case called. Deft & Counsel present. Deft sentenced to imprisonment for a period of 18 months as to each of counts 1,2,3,4, and 5, to run concurrently. Stay of execution of sentence pending appeal is granted. Bail continued.
1/7/77			Judgment & commitment filed. Certified copies to Marshals.
1/7/77			Before WEINSTEIN, J. - Case called. Deft & Counsel present. On motion of AUSA Dasweon the underlying superseding information is dismissed.
1/7/77			By WEINSTEIN J. - Order of dismissal for the superseding information filed.
1/17/77			Notice of Appeal filed.
1/17/77			Docket entries and duplicate of Notice of Appeal mailed to the C of A.
1-27-77			Record on appeal certified and mailed to the court of appeals
1.28.77			Stenographer's Transcript dated January 7, 1977 filed.
1.31.77			Order filed received from the Court of Appeals that the record be filed on or before January 31, 1977 filed.
2-4-77			Before Acknowledgment received from the court of appeals for receipt of record on appeal & filed
2/22/77			Supplemental record on appeal certified and mailed to the C of A.
2.25.77			Stenographer's Transcript dated 12.27.76 filed.

U.S. TITLE/SECTION
 18:922(a)(1), 923, 924, & 2
 T-26:5861(e), 5871
 OFFENSES CHARGED
 Did engage unlawfully in a business of dealing in firearms;
 Did unlawfully transfer a firearm;
 failed to make appropriate entries and maintain records which is required by law.

II. KEY DATES & INTERVALS
 ARREST or U.S. Custody Begins 9-3-76
 Summons Served
 First Appearance
 INDICTMENT 9/23/76
 INFORMATION 9/30/76
 ARRAIGNMENT 11/18/76
 SENTENCE 11/13/77

MAGISTRATE
 Search Warrant Issued
 Summons Issued
 Arrest Warrant Issued
 COMPLAINT
 OFFENSE (in Complaint)
 DATE 9-2-76
 INITIAL NO. VAC/07AA
 DATE 9-3-76
 INITIAL NO. VAC/07AA
 POSSESSION OF UNREGISTERED FIREARM. T-26 USC Section 5861(d) and 5871

U.S. Attorney or Asst.
 Appleyby
 ATTORNEYS
 Ira M. Gross, Esq. 9-14-76: Jacob P. Lefkowitz, Esq.
 299 B'way, NY 150 B'way, NY NY
 10038
 WO 4-4845

* Show last names and suffix numbers of other defendant, on same indictment, in this court.
 PASQUALE PICCIRILLO 2; MARIA PICCIRILLO 3; CARMINE MEROCOGLIANO 4
 DATE 9-14-76
 (DOCUMENT NO.)
 9-23-76
 9/23/76
 9/30/76
 10/14/76
 Deft. did not appear Ira M. Gross, Esq. applies to be relieved in view of Jacob Lefkowitz, Esq. notification to Gov't that he was retained - case adjourned to September 30, 1976 decision reserved on motion for relief of counsel - Mr. Gross need not appear on 9/24/76.
 Deft. indicted - no number available.
 Before CATOGGIO, J. - Indictment filed.
 Before PLATT, J - Case called. Deft & Counsel present.
 Deft waives reading of indictment and enters a plea of not guilty. Motions set date set down for 10/18/76 at 9:30 a.m. Defts motion to extend bail limits to include N.Y., N.J. Pa. & Ohio - granted on condition that deft call Pre-Trial services weekly.
 Notice of Pre-Trial motions, Notice of Pre-Trial motion pursuant to Rule 47 F.R. C.R.P. and Rule 41(e) F.R. C. R.P., with defts memorandum of law in support of certain pret-trial motions filed returnable 10/18/76.

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY
	(DOCUMENT NO.)	Interval (a)	BUILT-UP End Date (b) Ex Co. (c) Tax Days (d)
10/18/76	Before PLATT, J. - Case called. Deft & Counsel present. Motion for discovery withdrawn with leave to renew. Defts motion for return - granted on condition indicated in the record. Trial set down for 10/26/76 at 9:30 a.m.		
10-26-76	Affirmation of Jacob P. Lefkowitz filed		
10-26-76	Before Platt, J. - Case Called. James Bernard is ordered substituted for Louis Rosenthal as atty. for Deft. MERCOGLIANO Trial set down for 11-3-76 at 9:30 A.M.		
11-8-76	Before Platt, J. - Case Called. Deft. & Counsel present. Trial ordered and begun. Deft's motion for return of property - granted. Deft's motion to dismiss counts 1, 2 and 3 of the indictment - denied to leave to renew. Deft's motion for severance - denied. Trial held and continued to 11-9-76 at 10:00 A.M.		
11-9-76	Before Platt, J - case called - deft & atty present - defts motion for suppressing Govts. Ex. 11 - denied - trial contd to 11-10-76		
11-10-76	Before Platt, J. - Case Called. Deft. & Counsel present. Trial resumed. Deft's motion to dismiss - denied. Trial continued to 11-11-76 at 10:00 A.M.		
11-11-76	Before Platt, J. - Case Called. Deft. & Counsel present. Trial resumed. Trial continued to 11-15-76 at 10:00 A.M.		
11-15-76	Before Platt, J. - Case Called. Deft & Counsel present. Trial resumed. Deft's. motion for withdrawal of a juror and declaration of a mistrial - denied. Deft's. motion for withdrawal of a juror and declaration of a mistrial denied.. Deft's. motion for withdrawal of a juror and declaration of a mistrial - denied. Deft. Rests. Continued to 11-16-76 at 9:30 A.M.		
11-16-76	Before Platt, J - case called - trial resumed - defts motion for judgment of acquittal and for dismissal denied - trial contd to Nov 17, 1976 at 9:30 am hearing ordered and begun on Govts offer - hearing concluded.		
11/17/76	Before PLATT, J. - Case called. Deft & Counsel present. Trial resumed. Judge charge jurh. Jury retires for deliberations. Jury returns with a verdict of guilty on cts 1 and 3 and disagreement on count 2. Defts motbn for a mistrial - denied. Jury is excused until 11/18/76 at 9:30 a.m. for futher deliberations. Govts motbn to increase bail for deft to \$50,000 denied. Deft reserves motions. Trial cont. to 11/18/76 at 9:30 a.m.		
11/18/76	Before PLATT, J. - Case called. Deft & Counsel present. Jury resumes deliberations at 9:30 a.m. Jury returns with a verdict of not guilty on count 2. Jury is excused. Motions for deft - two weeks. Bail continued. Trial concluded.		

V. EXCLUDABLE DELAY

(a) (b) (c) (d)

DATE	PROCEEDINGS (continued)	(a)	(b)	(c)	(d)
	(Document No.)				
11/19/76	Stenographers transcripts dated 11/8/76, 11/9/76, 11/10/76, 11/11/76, and 11/15/76 filed.				
12-10-76	Notice of Motion pursuant to Rule 29(c) & Rule 33 F.R.Cr.P for an order setting aside the verdict and entering judgment of acquittal and for a new trial filed and forwarded to Chambers.				
1-13-77	Before Platt, J - case called - deft & counsel Jacob Lefkowitz present - defts motion to set aside the verdict is denied - defts motion for a new trial is denied; deft sentenced on each of counts 1 and 2 to imprisonment for 4 years under 18:4205(b)(2) and to pay a fine of \$5,000 on each count for total fine of \$10,000. Execution of sentence stayed pending appeal - fine to be paid within 90 days - bail contd.				
1-13-77	Judgment & commitment filed - certified copies to Marshal.				
1/17/77	Notice of Appeal filed.				
1/17/77	Docket entries and duplicate of Notice of Appeal mailed to the C of A.				
1-27-77	Record on appeal certified and mailed to the court of appeals				
2.1.77	Order filed received from the Court of Appeals that the record be filed on or before 2.28.77.				
2.1.77	Order filed received from the Court of Appeals that the record be filed on or before 2.28.77, in default of which the appeal shall be dismissed forthwith.				
2-4-77	Acknowledgment received from the court of appeals for receipt of record on appeal				

Interval

Start Date

Ltr. Total

Certs Day

----- X

UNITED STATES OF AMERICA

- against -

PASQUALE MADDALENA,

Defendant.

INDICTMENT

Cr. No. 76CR698
(T. 21, U.S.C., §622)

11-9-74

----- X **76 CR 698**

THE GRAND JURY CHARGES:

INTRODUCTION

1. The Federal Meat Inspection Act, enacted on December 15, 1967 as Title I of the Wholesome Meat Act requires the Secretary of Agriculture to provide for the inspection of establishments where meat and meat food products are processed.
2. At all times relevant to this Indictment, the Omaha Hotel Supply Corporation, located at 137 Fort Green Place, Brooklyn, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program, pursuant to the Federal Meat Inspection Act.
3. At all times relevant to this Indictment, the George Korn and Son, Incorporated, located at 639 Atlantic Avenue, Brooklyn, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program, pursuant to the Federal Meat Inspection Act.
4. At all times relevant to this Indictment, the Bornstein Brothers, Incorporated, located at 172 South Elliott Place, Brooklyn, New York, was engaged in interstate commerce

and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program, pursuant to the Federal Meat Inspection Act.

5. At all times relevant to this Indictment, the AAA Meat Provision, Incorporated, located at 914 Pacific Street, Brooklyn, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program, pursuant to the Federal Meat Inspection Act.

6. At all times relevant to this Indictment, the Jacob Zucker, Incorporated, located at 173 South Elliott Place, Brooklyn, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program, pursuant to the Federal Meat Inspection Act.

7. At all times relevant to this Indictment, the defendant PASQUALE MADDALENA was an inspector, officer and employee of the United States Department of Agriculture, Meat and Poultry Inspection Program, authorized to perform the duties required by the Federal Meat Inspection Act of 1967.

COUNT ONE

From on or about and between the 4th day of February, 1973 and the 10th day of February, 1973, both dates being approximate and inclusive, within the Eastern District of New York, the defendant PASQUALE MADDALENA, unlawfully, wilfully and knowingly did receive and accept from Omaha

money and other things of value,
namely, approximately Twenty-Five Dollars (\$25.00). (Title
21, United States Code, Section 622).

COUNT TWO

From on or about and between the 30th day of
September, 1973 and the 4th day of January, 1974, both dates
being approximate and inclusive, within the Eastern District
of New York, the defendant PASQUALE MADDALENA, unlawfully,
wilfully and knowingly did receive and accept from George
Korn and Sons, Incorporated, money and other things of
value, namely, approximately Twenty-Five Dollars (\$25.00)
weekly. (Title 21, United States Codes, Section 622).

*incriminate
got money
from George Korn*

COUNT THREE

From on or about and between the 30th day of
September, 1973 and the 5th day of January, 1974, both dates
being approximate and inclusive, within the Eastern District
of New York, the defendant PASQUALE MADDALENA, unlawfully,
wilfully and knowingly did receive and accept from Bornstein
Brothers, Incorporated, money and other things of value,
namely, approximately Fifty Dollars (\$50.00) weekly. (Title
21, United States Code, Section 622).

COUNT FOUR

From on or about and between the 6th day of January,
1974 and the 6th day of April, 1974, both dates being ap-
proximate and inclusive, within the Eastern District of New
York, the defendant PASQUALE MADDALENA, unlawfully, wilfully
and knowingly did receive and accept from AAA Meat Provision,
Incorporated, money and other things of value, namely,
approximately Twenty-Five Dollars (\$25.00) weekly. (Title
21, United States Code, Section 622).

*Kat
testified that
\$25.00*

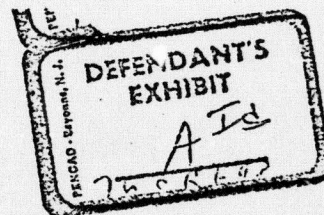
COUNT FIVE

From on or about, and between the 30th day of September, 1973 and the 5th day of January, 1974, both dates being approximate and inclusive, within the Eastern District of New York, the defendant PASQUALE MADDALEMA, unlawfully, wilfully and knowingly did receive and accept from Jacob Zucker, Incorporated, money and other things of value, namely, approximately Fifteen Dollars (\$15.00) weekly. (Title 21, United States Code, Section 622).

A TRUE BILL.

John Kuras
FOREMAN

DAVID C. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK



*Reuben
and Jerry
paid 25*
*testimony
by Borrelli
w/ 25*
*But not
mentioned
in information
plea*

*Carrying
out money from*

No. _____

UNITED STATES DISTRICT COURT

Eastern District of New York

Criminal Division

THE UNITED STATES OF AMERICA

vs.

PASQUALE MADDALEIRA,

Defendant.

INDICTMENT

(T. 21, U.S.C., §622)

A true bill,

John R. ...
Foreman.

Filed in open court this _____ day
of _____, A. D. 19____

Clerk.

Bail, \$_____

J. W. ...
trial 12/22/76
U.S. PRISON, AUSA 320-9084
902-482

1 MR. LEFKOWITZ: Thank you, your Honor.

2 MR. DAWSON: Your Honor, I have some house-
3 keeping matters and perhaps we can make use of a few
4 moments to dispose of them.

5 I have premarked a Government list of 3500
6 material and premarked Government's exhibits for
7 identification. Counsel has been shown both of those
8 types of material. I would like to file this with
9 the clerk.

10 Moreover, I guess it was over lunchtime, counsel
11 and I reviewed certain material together and we have
12 agreed on certain stipulations that might expedite.
13 I would like to place those on the record.

14 THE COURT: If you have agreed, put them before
15 the jury.

16 MR. DAWSON: I want to make sure we have a
17 complete understanding before I release the witnesses
18 from out of town.

19 Counsel, as I understand it, is stipulating
20 that the defendant was employed as a United States
21 Department of Agriculture meat inspector at the
22 establishment listed in each of the five counts of the
23 indictment on the dates or between the dates alleged
24 in each count of the indictment.

25 MR. LEFKOWITZ: That is correct.

1 MR. LEFKOWITZ: Okay.

2 MR. DAWSON: I understand counsel has no
3 objection.

4 MR. LEFKOWITZ: No objection.

5 THE CLERK: Marked in evidence?

6 THE COURT: Yes.

7 THE CLERK: Government's Exhibit 38 in
8 evidence.

9 (So marked.)

10 MR. DAWSON: If your Honor pleases, the
11 Government would like to introduce in this case, in
12 addition to the counts alleged, two witnesses concern-
13 ing prior similar acts of this defendant. This
14 activity as charged in the indictment. For a relatively
15 brief period, September 1973 to the early part of 1974.
16 Unless the jury is entitled to hear evidence of the
17 defendant's prior conduct, it would seem to be
18 completely out of context for them to appreciate a
19 relatively short period of time -- two months period
20 of time -- suddenly materializing out of the blue after
21 the defendant had been on the staff of the Department
22 of Agriculture for several years.

23 These two witnesses would testify to the
24 defendant's similar activity, harrassment activities
25 of their operation, solicitation of them for money,

1 amount of monies, the period of time they paid him,
2 and the set of facts they operated under when the
3 payment was made.

4 So that when the jury then hears the evidence
5 concerning the acts alleged in the indictment, at
6 least the jury has an understanding of the context --

7 THE COURT: What period are the independent
8 acts?

9 MR. DAWSON: The defendant became an inspector
10 in February 1970, he was trained for a brief period of
11 time, the acts occurred '71 and '72.

12 THE COURT: A year and two years before the
13 ones charged?

14 MR. DAWSON: Yes.

15 THE COURT: How many acts?

16 MR. DAWSON: From the period assigned to each of
17 those places, each week during the period of assignment.
18 The gentlemen do not know how long he was there since
19 there are no Agriculture Department records to estab-
20 lish that.

21 THE COURT: Same method of operation?

22 MR. DAWSON: Yes.

23 THE COURT: What is the objection?

24 MR. LEFKOWITZ: Your Honor, whatever facts the
25 counsel for the Government has just mentioned were well

1 known to the Government at the time when they saw fit
2 to present evidence to the Grand Jury. I have seen,
3 by 3500 material which was graciously handed to me
4 today instead of after the witness testified, that one
5 of these two people he's talking about testified
6 before the Grand Jury.

7 Now, I submit that I don't think it is proper
8 practice to -- if they're aware of any wrongdoing and
9 where the Statute of Limitations does not bar prosecution
10 -- to selectively target for the defendant by way
11 of an indictment and come in on the day of trial and
12 say we would like to introduce other evidence of
13 similar conduct.

14 THE COURT: You were aware of this before the
15 date of trial.

16 MR. LEFKOWITZ: I beg your pardon?

17 THE COURT: You were aware of this before the
18 date of trial?

19 MR. LEFKOWITZ: No. But I am not making that a
20 point.

21 THE COURT: When did you notify counsel?

22 MR. DAWSON: I think we discussed the case last
23 week.

24 MR. LEFKOWITZ: Not prior conduct.

25 MR. DAWSON: No.

1 THE COURT: When did you tell him about the
2 prior conduct?

3 MR. DAWSON: I think I gave the material this
4 morning.

5 THE COURT: That is not enough advance notice,
6 I think.

7 MR. DAWSON: The difficulty with pursuing a
8 course such as counsel suggests --

9 THE COURT: I am not asking for that course. I
10 don't think you have to go before the Grand Jury.
11 But I think you have to give him some notice. He's
12 got to try those cases too, in effect.

13 MR. DAWSON: We certainly can't use it in
14 rebuttal so he will have over the weekend --

15 THE COURT: If it comes up over the weekend,
16 all right. If the man takes the stand you can cross-
17 examine of course.

18 Thank you. You may take a few minutes.

19 (A recess taken at this time.)

20
21 (Continued next page)

1 : MR. LEFKOWITZ: Your Honor, in connection with
2 Mr. Dawson's application at the commencement of trial
3 about the introduction of similar acts, I at that time
4 pointed out to the Court that I had told Mr. Dawson
5 that he had represented to me in the course of my
6 inquiry insofar as motions relating to discovery were
7 concerned that this defendant was charged with
8 wrongdoing on a particular date -- particular date --
9 and that there were not acts of any such wrongdoing
10 approaching those dates or prior to those dates.

11 Now, I respectfully am urging upon the Court in
12 view of this representation to keep such testimony or
13 evidence out at this time.

14 MR. DAWSON: If your Honor pleases, my
15 recollection is somewhat different from that of
16 Mr. Lefkowitz. I certainly recall representing to him
17 there was no post-period of the indictment similar
18 acts, I have in my file six similar acts pre the period
19 in the indictment. I can't imagine myself saying I
20 didn't have. If it was a question of one, I could say
21 I overlooked it, but --

22 THE COURT: You may proceed in accordance with
23 my prior instructions.

24 MR. DAWSON: I padded it down and told
25 Mr. Lefkowitz I was seeking only one witness to testify

1 as to a similar act.

2 THE COURT: In view of the nature of the cross-
3 examination, suggesting that the witnesses are mistaken
4 about the identification of this defendant as the
5 person who took bribes -- not bribes -- or supplement
6 of their income, I think it is appropriate. You may
7 continue.

8 It will be limited to reduce the possible harm
9 to the defendant, instead of using six prior acts you
10 will only use one prior act. That seems reasonable.

11 MR. LEFKOWITZ: I just learned it was six.
12 The last time it was two.

13 MR. DAWSON: Two I was prepared to introduce,
14 but I have six in the file. I have given Mr. Lefkowitz
15 the grand jury and notes of interviews of witnesses.

16 THE COURT: All right, bring in the jury.

17 (The jury is in the jury box.)

18 THE COURT: Are we still short one of the jurors?
19 You are all here now.

20 MR. DAWSON: May I proceed with the next witness,
21 your Honor?

22 THE COURT: Good morning, everybody, I hope you
23 had a pleasant holiday.

24 JACK BORNSTEIN, a witness called on behalf of
25 the United States of America, was sworn by the Clerk

1
2 jury what occurred between yourself and the defendant with
3 respect to money in 1973?

4 A I paid the inspector -- I think it was \$25 a
5 week continuously.

6 Q Would you tell the ladies and gentlemen of the
7 jury what took place between you and the inspector with respect
8 to money in 1972?

9 MR. LEFKOWITZ: Objection, your Honor.

10 THE COURT: Overruled.

11 Q You may answer.

12 A Same thing as in '73.

13 MR. LEFKOWITZ: Your Honor, I object. There's
14 no evidence in this record that this man worked at his
15 plant in '72. There is a stipulation on file which I
16 entered with Mr. Dawson relating to any employment
17 with this man in '73, from January 4th -- excuse me --
18 From February 4, '73 to February 10, '73.

19 THE COURT: Well, you may cross-examine it.

20 Now, ladies and gentlemen, there may be evidence
21 of an act prior to that charge or acts prior to that
22 charge. Those acts or that act may not be used by you
23 as evidence that this defendant had a bad character
24 and therefore did the bad acts which were charged.
25 They may be used by you only to show if you believe

1
2 that they existed that there was a plan or that there
3 was an intent or an opportunity, or that this man was
4 the person identified as the inspector charged
5 specifically.

6 Is that clear? He is not being tried for
7 anything else that he may have done right or wrong or
8 indifferent, but only for those acts charged in the
9 indictment. Is that clear?

10 And it would be absolutely impermissible for
11 you to conclude from a different act that he was a
12 bad person and therefore did the particular bad acts
13 charged. Is that clear?

14 Is there any other charge that you would like
15 on behalf of the defendant at this time?

16 MR. LEFKOWITZ: No, your Honor. But I
17 respectfully submit that in addition to everything
18 else, there was no such representation made to counsel
19 in his request for discovery and particularization.

20 (continued next page)
21
22
23
24
25

Daren-direct

1
2 THE COURT: Well, the witness may have been
3 mistaken. And if so, you will develop that on cross-
4 examination.

5 You may proceed.

6 Q Now, Mr. Daren, with respect to 1972, would
7 you tell the ladies and gentlemen of the jury some of the
8 activities of the defendant while he was an inspector at
9 your company premises in 1972?

10 MR. LEFKOWITZ: Objection.

11 THE COURT: Overruled.

12 Q You may answer.

13 A Well, upon arriving at our place, the
14 inspector immediately harassed us, coerced us. Well,
15 everything went upside down. Nothing could move. Nothing
16 could go. Everything just stopped. And, frankly speaking,
17 we were at our wit's end.

18 Q Could you give the ladies and gentlemen of the
19 jury some specifics?

20 A Well, we have a conveyance that -- we did
21 have a conveyance when we were at our former location in '72
22 where the merchandise used to ride on a belt, stainless
23 steel belt, go down to a -- rather, the machine was stainless
24 The belt was a white plastic. Whatever you want to call it.

25 Anyway, the merchandise went this way, and it

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2 know exactly what he's after.

3 I'd like to talk for a few moments about an
4 aspect of this case which I think you should bear in
5 mind when you deliberate and discuss this among
6 yourselves. This case isn't only about the defendant.
7 This case is also about the public, about you and I,
8 the people in this courtroom and elsewhere. We all
9 can't be inspectors, whether it's Government
10 inspectors, fire inspectors, and meat inspectors.
11 We have to trust the people to do that for us because
12 it's important work. So we let people apply for that
13 job. And when we give them that job, we give them
14 that badge of office. We give them that power in
15 their hands. We give them the rules in their hands
16 to follow. We give them our hope, our trust, our
17 confidence that they will go out there and not only
18 perform efficiently but honestly.

19 Obviously, we all can't be there to watch all
20 the people that are watching for us. I submit to you
21 when he would go in to Mr. Cucurullo, or Mr. Katz, or
22 Mr. Rubin, or the others and stick out that hand for
23 that money, that we had placed all that trust in
24 and given all that authority, he was throwing that
25 badge away. He was throwing that trust away because

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2 he couldn't care less about it. What had to come
3 back in his hand was money. At the end of the day
4 on Friday there was only one thing, not whether the
5 company was running well or not, not whether the
6 conveyor belt was good or not -- money. That was
7 the only thing that mattered. And when he stuck out
8 that hand he knocked our hand away.

9 You must decide whether you will condone that
10 kind of conduct. You are the public after all.

11 What you say here will matter, whether you will
12 approve this kind of conduct, whether it sits well
13 with you, whether you are satisfied with that; or
14 whether or not you will say, any Federal employee
15 from the highest to the lowest to whom I have
16 entrusted responsibility is accountable to me as a
17 member of the public not to betray me, not to betray
18 that trust, not to say, I want more than the salary
19 that the public is paying. It would be, I submit,
20 a very sad day if all we could do was just hope and
21 trust for the best and never hold anyone accountable.
22 Because then we are at the mercy of the people that
23 we have sent out there to work for us. He is not
24 an inspector for himself. He is inspector for each
25 and everyone of us.

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2 I suppose there will be an argument that he
3 was out there to guard against bad meat, bad this,
4 bad that. Absolutely correct. But if you remember
5 it's not a question that is in evidence; it is an
6 answer.

7 There's been not one single bit of testimony
8 that any company paid him money to get any shortcuts
9 to do anything that they weren't entitled to do, or
10 to get him to close his eyes to anything. They all
11 said, after he was paid money he still pointed out
12 violations. They still corrected the things he point-
13 ed out. But instead of shutting down an entire
14 company because something went wrong in a corner
15 somewhere, and disappearing, he went by the book and
16 did what he had to do. We have had a lot of implica-
17 tions raised and questions here of witnesses. But
18 it's only those answers that matter. And I submit
19 to you that those answers are crystal clear. Not
20 one shred of evidence indicating that any of those
21 men wanted to pay him this money, chase him down the
22 hall to stuff money in his pocket, beg him, plead
23 with him to take money to allow them to do something
24 improper. If anything, it is just the opposite.

25 Interestingly enough, many of them said, we

Charge of the Court

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2 You are going to have to rely upon your
3 experience as people of general affairs in the
4 community in interpreting this evidence. This
5 defendant is charged with five separate crimes based
6 on allegations that money was received by him during
7 the years 1973 and 1974. If they are true, this
8 would constitute a crime under the Federal Meat
9 Inspection Act which was passed in 1967, providing
10 for the Secretary of the Department of Agriculture
11 to insure that establishments preparing meat and
12 meat products would be inspected promptly.

13 Each of the counts has to be considered
14 separately by you. In effect, you are trying five
15 different cases.

16 Your finding as to guilt or innocence as to
17 each count doesn't necessarily determine how you
18 should find on any other count. But you may consider
19 the evidence as to any count in connection with any
20 other count.

21 There was evidence of one act not charged.
22 This may be used by you as evidence of lack of
23 mistake or plan or intent or opportunity or identity
24 but not as evidence that this person is a bad person
25 and therefore committed the bad act charged. If he

Charge of the Court

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2 didn't commit the bad act charged, he must be
3 acquitted. It doesn't make any difference what he may
4 have done or what somebody else may have done.

5 The first charge reads as follows:

6 "From on or about the between the 4th day of
7 February, 1973, and 10th day of February, 1973, both
8 dates being approximate and inclusive, this defendant
9 unlawfully, willfully and knowingly did receive and
10 accept from Omaha Hotel Supply Corporation approximately
11 \$25."

12 The second count is the same except that it
13 charges between September 30th, 1973 and January 4,
14 1974, the defendant received approximately \$25 weekly
15 from George Korn & Sons, Inc.

16 The third count similarly charges that
17 between September 30th, 1974 and January 5, 1974, he
18 received approximately \$50 weekly from Bornstein
19 Brothers, Inc.

20 The fourth count similarly charges between
21 January 6, 1974 and April 6, 1974, the defendant
22 received approximately \$25 weekly from AAA Meat
23 Provisions Inc.

24 And the fifth charges that between September 30,
25 1973 and January 5, 1974, the defendant received